IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.198 OF 2005

Shri Gokuldas Vishram Ghadi
S/o. Vishram Ghadi,
40 years of age,
Married, r/o. Chikneim
Kudniem, Bicholim, Goa. ...Applicant

V e r s u s

S T A T E
(Through P.I. attached to
Bicholim Police Station)
Bicholim – Goa. ...Respondent

CRIMINAL MISC. APPLICATION NO.199 OF 2005

Shri Sanjay Vishram Ghadi
S/o. Vishram Ghadi,
38 years of age,
Married, r/o. Chikneim
Kudniem, Bicholim, Goa. ...Applicant

V e r s u s

S T A T E
(Through P.I. attached to
Bicholim Police Station)
Bicholim – Goa. ...Respondent

CRIMINAL MISC. APPLICATION NO.200 OF 2005

Shri Dayanand Vishram Ghadi,
S/o. Vishram Ghadi,
36 years of age,
Married, r/o. Chikneim
Kudniem, Bicholim, Goa. ...Applicant

V e r s u s

S T A T E
(Through P.I. attached to
Bicholim Police Station)
Bicholim – Goa. ...Respondent

Shri Menino Teles, Advocate for Applicants.

Srhi S.N. Sardessai, Public Prosecutor for Respondent.

CORAM: N.A. BRITTO,J

DATE : 26TH OCTOBER, 2005

ORAL ORDER:

The applicants herein are brothers and accused in Sessions Case No.15/05 which is pending before the learned Second Additional Sessions Judge, Panaji. After framing of charge under Sections 302, 323, 504 r/w.34 I.P.C. the trial is proceeding and some witnesses have been examined.

The bail applications filed by the said accused were earlier rejected by the learned Sessions Judge, Panaji on 7.2.05 and 3.3.05 and the application filed by A-3 Sanjay Ghadi was rejected on 15.6.05 by the learned Additional Sessions Judge mostly because of the observations made by the learned Sessions Judge in the said orders rejecting their applications for bail. The facts stated by the prosecution show that on 18.1.05 at

about 18.30 hrs. there was an incident between Smt. Sushmita Ghadi, wife of Subhash Ghadi and Shaila alias Shoba Ghadi, wife of A-3 Sanjay Ghadi on the issue of garbage which is sated to have been thrown in the property of the family of deceased Gurudas Krishna Ghadi. Regarding that incident, the said Smt. Shaila @ Shoba had lodged a complaint which was treated as N.C. No.9/05 under Sections 504, 323 I.P.C. On the same day, at about 19.15 hrs. all the three accused went to the house of the deceased Gurudas Krishna Ghadi, the first two armed with bamboo sticks and the third with a stick in search of the said Subhash Ghadi and at that time, the widow of the deceased, the daughter of the deceased by name Reshma Ghadi and her brother Sandeep Ghadi were present and the accused shouted asking for Subhash Gurudas Ghadi demanding that he should come out of the house. The said Subhash Gurudas Ghadi is stated to be residing not with the family of the deceased Gurudas Krishna Ghadi but at a distance of about 200 metres in a newly constructed house by him. It is alleged that when the deceased Gurudas Krishna Ghadi left the house to see Subhash Gurudas Ghadi and when he reached in the courtyard of the house of the Sarpanch by name Shri Shantaram Ghadi, all the three accused assaulted him with the said bamboo sticks/stick and also

assaulted his daughter Reshma, his widow and brother Sandeep when they went for the rescue of their father. As Gurudas Krishna Ghadi was injured and was bleeding profusely, he was taken immediately to Sanquelim by the said Sarpanch and from there he was taken to Goa Medical College, Bambolim where he died on 20.1.2005 at about 9.00 hrs. It appears that after the incident a complaint was lodged by Sandeep Gurudas Ghadi which was treated as N.C. No.10/05 under Sections 323, 504 I.P.C. and after the death of the deceased Gurudas Krishna Ghadi, the complaint lodged by his daughter Reshma Gurudas Ghadi was treated as F.I.R.

Shri Teles, the learned Advocate appearing on behalf of the accused has submitted that in the case at hand there was a delay in lodging the F.I.R. on 20.1.05 when the incident had taken place on 18.1.05, which was not explained. Shri Teles has further pointed out that in her said F.I.R., Reshma Gurudas Ghadi has not even mentioned the part of the body of the deceased on which the accused assaulted him and that the said Sarpanch by name Shantaram Ghadi has not uttered a word regarding the participation in assault by A-3 Sanjay Ghadi since the said Shantaram Ghadi has only stated that he saw him only

standing with a stick in his hand. Referring to the medical certificates of the said Reshma Ghadi as well as widow of the deceased Nalini Ghadi, Shri Teles has pointed out that the history of assault given by them to the Medical Officer at the Primary Health Centre, Bicholim refers to only assault by A-1 Dayanand Ghadi and therefore the other accused at least would be entitled to be admitted to bail. On the other hand, Shri Sardessai, the learned Public Prosecutor has submitted that charge has already been framed against all the accused under Sections 302, 323, 504 r/w. 34 I.P.C. and since the accused are charged with the aid of Section 304 I.P.C. and A-3 Sanjay was present with the stick, the latter was sharing the common intention alongwith the others.

Shri Teles has placed reliance on several decisions namely, the case of **Abdul Majid v. The State of Rajasthan (1981 CRI. L. J. 1316), Jeet Ram and etc. etc. v. State of Himachal Pradesh (2003 CRI. L. J. 736)** and an unreported decision of this Court dated 22.2.96 in Criminal Miscellaneous Application Nos.11 & 12 of 1996 and has submitted that since A-3 Sanjay Ghadi did not commit any overt act, at least Sanjay Ghadi be admitted to bail. I have perused the said decisions.

Admittedly, the relations between both the parties appear to have been strained for sometime and there was already an incident on the same day between Smt. Sushmita, the wife of Subhash Ghadi, the latter being the son of the deceased Gurudas Krishna Ghadi and Smt. Shaila @ Shoba, wife of A-3 Sanjay Ghadi. It is after the said incident that all the three accused went armed, as aforesaid, in search of the said son namely, Subhash Gurudas Ghadi and demanded that he should come out of the house and when the deceased Gurudas Krishna Ghadi started going in search of him through the courtyard of the house of the Sarpanch by name Shantaram Ghadi ,that all the accused assaulted him and as a result of the assault, the deceased Gurudas Krishna Ghadi started bleeding profusely and was taken to Primary Health Centre, Bicholim, as aforesaid. It is certainly not the case of the prosecution that all the three accused had gone prepared to assault the deceased Gurudas Krishna Ghadi and in fact, the facts stated by the prosecution show that they had gone in search of the said Subhash, son of the deceased and it is only when the deceased started going in search of his said son that all the three accused assaulted the said Gurudas Krishna Ghadi which assault ultimately proved to

be fatal. As already stated, as regards the said assault, a N.C. was first registered upon a complaint lodged by the son of the deceased Sandeep Ghadi and the deceased died two days thereafter and this itself shows that initially the incident was not considered as serious by the Police. No doubt, the assault on the deceased with bamboo sticks proved to be fatal but even at this stage it would be difficult to conclude that any of the accused had intended to cause the death of the deceased Gurudas Ghadi moreso when they had all gone armed in search of his son Subhash Gurudas Ghadi and not of him, because of the earlier incident. In such a situation, it could not be said that the offence committed by the accused is of extreme gravity or for that matter the punishment the accused would be entitled to would be of extreme severity. The evidence to which I have already made some reference including the exact role played by A-3 Sanjay Ghadi and the initial history of assault given by the daughter Reshma and the widow Nalini, would also make this case good enough to admit the accused to bail. As far as the allegation that in case the accused are admitted to bail they would interfere with the witnesses belonging to the family of the deceased is concerned, it appears to be more imaginary than real. In any event, any apprehension in that regard can be taken

care of by imposing suitable conditions. Hence the order:

O r d e r

All the applicants are admitted to bail. They shall be released upon execution of a bond of Rs.10,000/-(Rupees ten thousand only) each with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Panaji and with a further condition that till the main witnesses of the prosecution are examined in the trial, they shall not reside in the locality/same village. For modification of this condition the accused would be entitled to apply to learned Additional Sessions Judge, in case such modification is necessary.

N. A. BRITTO,J

/vpf.